

REMARKS

In the Office Action mailed June 18, 2003 (“the Office Action”), the U.S. Patent and Trademark Office (“the Patent Office”) stated that claims 1, 5, 11, 15, and 17-19 were pending in the application and that claims 1, 5, 11, 15, and 17-19 were rejected. The Patent Office also stated that a certified copy of the priority documents had not been received. A certified copy of the priority document accompanies this Response. Also in the Office Action, the Patent Office reiterated its acknowledgement that the requirement for a substitute specification will be held in abeyance pending allowance of the claims.

In the Office Action, claim 19 was rejected under 35 U.S.C. § 112, second paragraph. Furthermore, in the Office Action, claims 1, 5, 11, 15, 17, 18 and 19 were rejected under 35 U.S.C. § 103(a). The applicant traverses these rejections for the reasons that follow as well as for the reasons of record, in light of the amendments herein.

Rejection of claims 19 under 35 U.S.C. § 112, second paragraph:

In the Office Action, claim 19 was rejected under 35 U.S.C. § 112, second paragraph. The Patent Office alleged that “[t]his claim is drawn a product holder; however, a product holder is already recited in claim” [*sic*]. Merely to expedite prosecution of the present patent application and without prejudice to future prosecution or presumption regarding patentability, claim 19 is cancelled herein. In view of this amendment, the applicant respectfully requests that this rejection be reconsidered and withdrawn.

Rejection of claims 1, 5, 11, 15, 17, 18 and 19 under 35 U.S.C. § 103(a):

In the Office Action, claims 1, 5, 11, 15, 17, 18 and 19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Neil (U.S. Patent No. 5,960,967) in view of Kohout (U.S. Patent No. 1,132,190). The Patent Office alleges that Neil shows a device comprising a rail-like member having a slot and a hook with an anchor member. The Patent Office further alleges that Kohout shows a device having a telescopic rail-like member for adjusting the length of the member. In the Office Action, the Patent Office states:

“It would have been obvious to one skilled in the art at the time the invention was made to have provided the device shown by Neil with telescopic members as shown by Kohout to adjust the length of the device and make it more versatile and easy to storage [*sic*]. To use a ball as the anchor means, as the material from which said anchor means is made, and the shape of the edges of the slot are considered as obvious matter of engineering choice having no patentable significance.” (Office Action, page 3.)

The applicant respectfully asserts that this conclusory statement does not satisfy the requirement that the Patent Office present a *prima facie* case of obviousness when asserting a rejection based on 35 U.S.C. § 103. The Patent Office has not presented any evidence showing any motivation to combine the references as the Patent Office has done, either in the references themselves or in the knowledge generally available to a person skilled in the art. The Patent Office has not presented any evidence showing that by combining the references a person skilled in the art would have a reasonable likelihood of success of producing the present invention. The applicant respectfully asserts that the reasonable likelihood of success is provided by the applicant’s disclosure and not by the prior art.

The references cited by the Patent Office clearly teach away from the present invention and provide no motivation to combine or present a likelihood of success. The Neil reference discloses a track member from which protrude hook elements for hanging packages with apertures (*see* the Abstract). The track member of Neil is fixed by mounting to a wall or a ceiling. (*See e.g.*, Column 1, line 62; Column 1, line 67; Column 2, line 19; and elsewhere in the document.) The protruding hook elements of the Neil device are held within the track member such that they **cannot rotate**. (*See e.g.*, Column 3, line 17; Figures 1-7; Figures 17-19; and elsewhere in the document.) The Kohout reference shows a movable rack that may be drawn out or moved back. (*See e.g.*, Lines 15-17 and elsewhere in the document.) Fixed hooks protrude from the underside of the Kohout device. (*See e.g.*, Lines 87-93, Figures 1-3, and elsewhere in the document.)

The applicant respectfully reiterates that the Patent Office has misconstrued the extent of the invention disclosed by Neil. Even though the Neil reference contains the statement: “The anchor parts of the hook elements may be non-circular and arranged to be non-rotatably held....” (Column 2, lines 4-5), the phrase “may be” in the statement does not indirectly teach that a circular connection would permit rotation. Not a single embodiment of the Neil device, either disclosed in the specification or depicted in the figures, contemplates rotatable anchor elements.

In fact, the Neil reference specifically describes anchor elements that **cannot rotate**. (*See e.g.*, Column 3, line 17; Figures 1-7; Figures 17-19; and elsewhere in the document.) Therefore, the Neil reference specifically teaches away from the presently claimed invention.

Following the Patent Office's logic, virtually everything that is not explicitly recited following the phrase "may be" in any patent specification would nevertheless be indirectly taught by the mere use of the phrase "may be." The scope of every patent or patent application that uses the phrase "may be" would thus be virtually unlimited. The applicant respectfully asserts that nowhere in the Manual of Patent Examining Procedure, 8th Ed., Rev. 1 (MPEP) or anywhere in the reported case law can one find support for the proposition that the phrase "may be" indirectly teaches that which is not explicitly stated following the phrase. The applicant respectfully requests that the Patent Office point to a section of the MPEP or a reported case that supports this "indirect teaching through the use of the phrase may be" doctrine.

The applicant respectfully reiterates that none of the references, alone or in any combination, teach the invention as claimed by the applicant in the present patent application. In fact, the references teach away from the claimed invention.

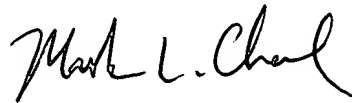
In view of the foregoing and in view of the arguments of record in the present patent application as well as in view of the amendments to the claims, the applicant respectfully requests that the rejection of claims 1, 5, 11, 15, 17, 18 and 19 under 35 U.S.C § 103(a) be reconsidered and withdrawn.

CONCLUSION

The applicant respectfully requests reconsideration of the present application in view of the Remarks and Amendments herein. The applicant respectfully contends that the pending claims are allowable. The Patent Office is encouraged to contact the undersigned directly, if it is believed that such would expedite consideration of the patent application. Prompt issuance of a Notice of Allowance and passage of the claims to issue are respectfully requested.

Sincerely,

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